

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

FILED

SEP 11 2007

JANET L. CLEVINGER,

U.S. DISTRICT COURT
ELKINS WV 26241

Plaintiff,

v.

Civil Action No. 2:05cv93
(Maxwell)

COMMISSIONER, SOCIAL
SECURITY ADMINISTRATION,

Defendant.

ORDER

On June 29, 2006, the Court referred this Social Security action to United States Magistrate Judge James E. Seibert, pursuant to 28 U.S.C. § 636(b)(1)(B), Rule 72(b) of the Federal Rules of Civil Procedure and Local Rule 7.02(c), with directions to consider the same and to submit to the Court proposed findings of fact and a recommendation for disposition. On November 7, 2006, Magistrate Judge Seibert filed his Report and Recommendation wherein the parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. Plaintiff filed her Objections to the Report and Recommendation of United States Magistrate Judge Seibert on November 17, 2006, and Defendant filed objections to the Report and Recommendation and response to Plaintiff's objections on November 22, 2006.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised in the cross motions for summary judgment were thoroughly considered by Magistrate Judge Seibert in his Report and Recommendation.

The Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the proposed Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Moreover, neither the Plaintiff's nor the Defendant's objections have raised any issues that were not thoroughly considered by the Magistrate Judge in his Report and Recommendation. Therefore, it is

ORDERED that Magistrate Judge Seibert's proposed Report and Recommendation be, and hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge.

Accordingly, it is

ORDERED that the Defendant's Motion for Summary Judgment be, and the same hereby is, **DENIED**. It is further

ORDERED that the Plaintiff's Motion for Summary Judgment be, and the same hereby is, **GRANTED IN PART**. It is further

ORDERED that this matter is **REVERSED AND REMANDED** to the Commissioner pursuant to the fourth sentence of 42 U.S.C. §405(g) for further action in accordance with the Report and Recommendation so that, as more fully set forth in the Report and Recommendation, a physical medical expert can be employed to evaluate the nature and severity of Claimant's ailments and how those impairments affect her ability to perform work related functions, including whether her ailments meet or equal a Listing at step three of the sequential evaluation process.. In accordance with Shalala v. Schaefer, 113 S.Ct. 2625 (1993), it is further

ORDERED that the Clerk of Court shall enter judgment reversing the decision of the Defendant and remanding the case to the Defendant for further proceedings and shall thereafter **DISMISS** this action from the docket of the Court.

Counsel for the Plaintiff is advised that an application for attorney's fees under the Equal Access to Justice Act (EAJA), if one is to be submitted, must be filed within 90 days from the date of the judgment order.

The Clerk of Court is directed to enter a separate judgment order and to send a copy of this Order to all counsel of record.

ENTER: September 11th, 2007



United States District Judge